

IN THE UNITED STATES DISTRICT COURT MAY 24 2010
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, CLERK
By:  Cheryl Hatten, Clerk

-GET

JEROME C. COSBY, JR.)

Plaintiff,)

v.)

MILLARD REFRIGERATED
SERVICES, INC.)

Defendant.)

CIVIL ACTION FILE NO:

1 10·CV-1587

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW JEROME C. COSBY, JR. ("Plaintiff" or "Mr. Cosby"), Plaintiff in the above-styled civil action and pursuant to the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. §2601 et seq., files this Complaint against MILLARD REFRIGERATED SERVICES, INC., showing this honorable Court as follows:

JURISDICTION AND VENUE

1.

This Court has original jurisdiction over this matter pursuant to 29 U.S.C. § 2601 et seq., The Family and Medical Leave Act of 1993.

2.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1391(b), because Defendant resides in or does business this judicial district.

PARTIES

3.

Plaintiff is a male citizen of the United States residing in Stockbridge, Georgia.

4.

Defendant, MILLARD REFRIGERATED SERVICES, INC. (hereafter, "Millard") is a foreign corporation which may be served with a copy of the Summons and Complaint by and through its registered agent: CT Corporation System, 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30302. This Court has jurisdiction over this Defendant.

5.

At all times pertinent to this action, Millard was a covered "employer" as that term is defined by 29 U.S.C. § 2611(4)(A).

6.

At all times pertinent to this action, Mr. Cosby was a "covered employee" as that term is defined at 29 U.S.C. § 2611(2)(A) and he is therefore entitled to the protections provided by FMLA.

FACTS

7.

From approximately August 18, 2008 until December 23, 2009, Mr. Cosby was employed full-time by Millard as a Loader.

8.

In or about early December, 2009, Mr. Cosby sought and received approval to be absent from several days of work at Millard because of his own serious health condition.

9.

On or about that time, Mr. Cosby was receiving medical treatment for his own serious medical condition at Henry Medical Center, Inc., and his fiancé supplied Millard with a medical excuse from his physician(s) for each and every day he was absent from work at Millard.

10.

On December 23, 2009, Millard terminated Mr. Cosby's employment, informing him that it could no longer hold open his position.

11.

Millard's proffered reason for terminating Mr. Cosby was his alleged absenteeism, and being an alleged "no-call/no-show."

COUNT I

**INTERFERENCE WITH PLAINTIFF'S RIGHTS UNDER
THE FAMILY AND MEDICAL LEAVE ACT OF 1993**

12.

Plaintiff realleges the allegations contained in paragraphs 1 - 11 as if fully set forth herein.

13.

FMLA authorizes up to 12 weeks of leave during any 12-month period because of a serious health condition. Thereafter, the employee is entitled to be restored to her original position, or an equivalent one, with equivalent benefits, pay and other terms of employment.

14.

Because of a serious health condition, Mr. Cosby required leave from Millard as contemplated and authorized by the FMLA.

15.

Mr. Cosby requested authorized FMLA leave from Millard due to his serious health condition.

16.

Effective December 23, 2009, less than 12 weeks after his request for FMLA leave, Millard informed Mr. Cosby that it could no longer hold open his position and

terminated his employment for being an alleged “no-call/no-show.”

17.

As a result of Millard’s unlawful employment practices, Mr. Cosby is entitled to injunctive relief enjoining Millard from engaging in such unlawful practices in the future, and such other relief as may be appropriate, including but not limited to reinstatement with double back pay, reasonable attorney’s fees and costs of litigation.

COUNT II

RETALIATION AGAINST PLAINTIFF FOR EXERCISING HIS RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

18.

Plaintiff realleges the allegations contained in paragraphs 1 - 17 as if fully set forth herein.

19.

In or about early December 2009, Mr. Cosby sought and received approval to be absent from work because of his own serious health condition.

20.

In or about the same time, Mr. Cosby’s fiancé provided Millard with a written doctor’s note for each and every day Mr. Cosby was out of work due to his serious health condition, for which he was treated at Henry Medical Center, Inc.

21.

Effective December 23, 2009, Millard terminated Mr. Cosby's employment after informing him that it could no longer hold open his position.

22.

In doing so, Millard retaliated against Mr. Cosby for attempting to exercise his federally-protected FMLA rights.

23.

As a result of Millard's intentional and unlawful employment practices, Mr. Cosby is entitled to injunctive relief enjoining Millard from engaging in such unlawful practices in the future, and such other relief as may be appropriate, including but not limited to reinstatement with double back pay, reasonable attorney's fees and costs of litigation.

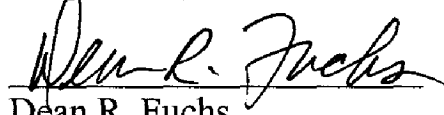
WHEREFORE, Plaintiff prays as follows:

- a. that the Court enjoin Millard from engaging in unlawful employment practices in the future;
- b. that the Court order that Mr. Cosby be reinstated and awarded back pay, restoration of all rights and privileges, fringe benefits, and prejudgment interest since the date of its termination of Plaintiff, or in the alternative, a reasonable amount of front-pay;

- c. that the Court award Plaintiff his reasonable attorney's fees, expert witness fees, and costs of litigation;
- d. that the Court award Plaintiff special and allowable compensatory damages;
- e. all other relief this Court deems proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL JURY ISSUES

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dean R. Fuchs", is written over a horizontal line.

Dean R. Fuchs

Georgia Bar No. 279170

Attorney for Jerome C. Cosby, Jr.

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